IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13541 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BABUBHAI MAGANBHAI

Versus

JAYSHRI AMBIKA DAIRY

Appearance:

MR TR MISHRA for the Petitioner.

MR IM PANDYA for Respondents No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 11/10/2001

ORAL JUDGEMENT

1. The petitioner-employee has challenged the order passed by the Labour Court, Ahmedabad, dated 12.1.2000, passed in Miscellaneous Civil Application No.102 of 1999. By the aforesaid order, the Labour Court, Ahmedabad, allowed the said Miscellaneous Application and it was ordered that the original Reference, being Reference

(LCA) No. 2642 of 1988, should be restored on file and should be decided on merits.

2. The aforesaid Reference (LCA) No.2642 of 1988 is pending in the Labour Court and it is a matter of pity that even though 13 years have passed, the said Reference is still pending. The concerned workman had raised the said dispute on the ground that he was serving with Jayshri Ambika Dairy / Janata Dairy and he was receiving Rs.300/- per month, even though he was entitled to Rs.686/- per month and his services were terminated without following the procedure of law, with effect from 25.9.1988.

3. On behalf of the respondents, the said Reference was not contested and, therefore, by order dated 23.9.1994, an ex parte Award was passed in favour of the present petitioner and the respondents herein were directed to reinstate the concerned workman, with continuity of service and full back wages. Therafter, on behalf of the respondents, an application was filed under Rule 26-A of the Industrial Disputes Rules, 1966, for setting aside the ex parte order. The said Application was numbered as Miscellaneous Application No. 187 of 1995.

The Labour Court, Ahmedabad, passed an order on 6.2.1996 and by the said order, aforesaid Miscellaneous Application No.187 of 1995 was allowed and the original Reference was restored on file. However, the respondents herein were directed to pay costs of Rs.1,000/-. The respondents were totally negligent and again, they failed to appear before the Court and, therefore, by another order dated 12.1.1998, the Labour Court confirmed the earlier order, which was passed on 23.9.1994. Thereafter, again, the present respondents gave fresh application, being Application No.102 of 1999. The same was also filed under Rule 26-A of the aforesaid Rules. In that Application, it was prayed that since wife of the proprietor of the Company died, on 20.6.1998, they could not contact their Advocate at the relevant time and that the respondents were not having any knowledge about the earlier order. It was also stated in the application that since the wife of the aforesaid person was required to be taken often at Mumbai, the applicant of that application was in mental tension and, therefore, he could not remain preset on appropriate dates before the Court. The Labour Judge, ultimately, by the order dated 12.1.2000, allowed the said application and ordered that the respondents (original applicant in that application) should pay costs of Rs.1,000/-, which the respondents

were required to be deposited as per the earlier order as well as costs of Rs.4,000/- of the present application and, in all, after depositing Rs.5,000/-, the said application should be treated to have been allowed and the original reference should be decided again on merits.

The aforesaid order is challenged at the instance of the concerned workman by filing this Special Civil Application.

4. At the time of hearing of this Special Civil Application, it was argued by Mr.Mishra, learned Advocate for the petitioner, that there was a total inaction and negligence on the part of the respondents. Mr.Mishra submitted that on earlier occasion, ex parte Award was passed, but the same was set aside. But, again, the respondents continued to remain negligent and, therefore, the Court was required to pass ex parte order again. Mr.Mishra argued that, therefore, the respondents are interested only in prolonging the pending Reference of 1988 and the workman is subjected to great mental torture and agony, as, after 13 years, he is not in a position to get his Reference adjudicated on merits. It was argued by Mr.Mishra that in view of the aforesaid total negligence on the part of the respondents, the Court should not have restored the matter again and, at least, there is no reason to restore the said matter, especially when one chance was already given to the respondents. He, therefore, submitted that the impugned order, by which the original Reference is restored on file, is required to be set aside.

5. Against the aforesaid argument, Mr.Pandya, learned Advocate, has submitted that, in view of the unfortunate incident of death of wife of the proprietor, the said proceedings were not attended in the Labour Court at the relevant time. Mr.Pandya further argued that because of the aforesaid unfortunate incident, the respondents could not convey appropriate details of the case to their Advocate.

6. Considering the facts and circumstances of the case, I am convinced that there is total negligence on the part of the respondents. It is no doubt true that the fact about the death of wife of the concerned proprietor is not in dispute. However, the past conduct on behalf of the respondents makes it clear that the respondents are interested only in prolonging the said Reference and they are not interested in proceeding with the matter on merits. However, since the Labour Court has given one more chance by giving opportunity to the

respondents to lead their evidence, in the facts and circumstances of the case, I would not like to disturb the said order. However, considering the facts of the case and considering the fact that since 1988, the Reference is pending, the respondents herein are directed to deposit Rs.50,000/- over and above Rs.5,000/-, which they are required to deposit as per the order of the Labour Court. This additional Rs.50,000/- should be deposited towards back wages and the said amount to be deposited within a period of four weeks from today. Mr.Pandya has assured the Court that he will convey this order to his client so that they can deposit the said amount by the aforesaid time. This payment of Rs.50,000/- towards back wages will be subject to the final outcome of the proceedings in the Labour Court. The petitioner-workman will be entitled to withdraw the aforesaid amount, after the same is deposited by the respondents in the Labour Court. As stated earlier, the said amount will be subject to the final adjustment as per the order of the Labour Court in the said Reference.

7. So far as Rs.5,000/- is concerned, the same is required to be deposited as per the order of the Labour Court towards the costs of the application which was submitted by the respondents. The petitioner-workman will be entitled to withdraw the said amount of Rs.5,000/-, which would be treated as withdrawal towards costs and the said amount will not be subjected to any adjustment in any manner. It is clarified that if the amount, as ordered above, is not deposited within the stipulated time in the Labour Court, then Miscellaneous Application No. 102 of 1999 shall be treated to have been dismissed and nothing further will be required to be done in the said proceedings. Looking to the manner in which the respondents have conducted the matter, it is clear that total negligence is exhibited by them, but in order to see that one last chance is given, this Court is not interfering with the restoration order. It is also clarified that in the pending Reference, after depositing the amount, if the respondents continue to be negligent, then, the Labour Court will not give any further opportunity by allowing them to lead any further evidence and since the Reference is of 1988, the Labour Court is directed to dispose of the same on merits by 31st January, 2002.

8. It is clarified that so far as the merits of the case is concerned, this Court has not expressed any opinion and ultimately, it is for the Labour Court to pass final order on merits in the pending Reference. The order of the Labour Court is accordingly modified in so

far as payment of the amount of Rs.50,000/- towards back wages is concerned. The petition is partly allowed to the above extent. Rule is made absolute accordingly with no order as to costs.

Writ to be sent to the Labour Court, Ahmedabad, forthwith.

11th October, 2001 (P.B. Majmudar, J.)

****

(apj)